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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,262	08/18/2003	Edward N. Thomas	005127.00003	1566
22909	7590	11/15/2005	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			KAVANAUGH, JOHN T	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,262

Applicant(s)

THOMAS ET AL.

Examiner

Ted Kavanaugh

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15,30-35,43-45 and 51-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51-58 is/are allowed.
- 6) ☒ Claim(s) 1-15,30-35 and 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Oct. 27, 2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-15,30-35,43-45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 5083361 (Rudy).

Rudy teaches a fluid filled bladder (10) for an article of footwear as claimed including a flexible outer barrier (12 and coupling material 23,24), a core having a first wall structure (16) and a spaced second wall structure (18) having plurality of connecting members (20) and the outer surfaces layers of the core having at least one fusing filament (tendrils 42,46) that fused directly with the outer barrier (23,24) and secures the core to the outer barrier. Figure 4C shows the best illustration of the connection of the filaments (42,46) and the outer barrier; also see the

Art Unit: 3728

description provided at col. 24, line 27 to col. 25, line 46. Regarding the chamber at a pressure of at least 5 pounds per square inch (functional language), see col. 4, lines 30-37.

4. Claims 1,2,4-10,12-15,30,31,33-35,43 and 45 rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 5741568 (Rudy).

Rudy teaches a fluid filled bladder (10) for an article of footwear as claimed including a flexible outer barrier (11; 611; 711), a core (12;612;712) having a spaced wall structure (610;710) having plurality of connecting members (filaments 613,713) and the outer surfaces layers of the core having at least one fusing filament (613;713; see figures 5C and 5D which show the filaments embedded in the outer barrier layers) that fused directly with the outer barrier (12) and secures the core to the outer barrier. Figure 5C and 5D shows the best illustration of the connection of the filaments (613; 713) fused directly to the outer barrier; also see the description provided at col. 8, line 29 to col. 10, line 6. Regarding the pressure in claim 43, it would appear the chamber of Rudy would inherently perform the function as claimed inasmuch as it has all of the structure as claimed.

Rudy also teaches the cushioning devices of US 5083361 (the first rejection listed above) is incorporated by reference and can be used in conjunction with this patent '568, see col. 6, lines 47-58.

Response to Arguments

5. Applicant's arguments filed Oct. 27, 2005 have been fully considered but they are not persuasive.

Applicant argues the fibers of Rudy '568 are embedded with the barrier and not fused to the barrier.

In response, see col. 8, lines 39-44 and 51-67, wherein it teaches the are embedded by a curing process, flame treatment, RF heating and other methods. Therefore the elements are fused together. The barrier layer (i.e. elastomeric material) is melted so that the filaments are embedded within.

Regarding Rudy '361 patent, the rejection has been reworded in view of applicant's amendment.

Allowable Subject Matter

6. Claim 51-58 are allowed since the material of the fusing filament, fused directly to the outer barrier, is not of the same material as the outer barrier, in either of the Rudy patents.

Conclusion

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”


-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.

Art Unit: 3728

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 (**FORMAL FAXES ONLY**). Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.


Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
November 11, 2005